

MEMORANDUM

TO: All Parties to: Berkshire Gas Company, D.T.E. 04-47

FROM: John J. Geary, Hearing Officer

DATE: July 26, 2004

RE: Procedural Schedule and Ground Rules

CC: Mary Cottrell, Secretary
Staff as Assigned

I. PROCEDURAL SCHEDULE

The parties shall follow the procedural schedule outlined below for the remainder of this proceeding:

Discovery Commences on a Rolling Basis	Friday, July 23, 2004
Last Day to Issue Discovery to Company	August 24, 2004
Evidentiary Hearings	September 9, 10, 2004
Simultaneous Initial Briefs	September 24, 2004
Simultaneous Reply Briefs	October 1, 2004

Under the provisions of 220 C.M.R. § 1.06(6)(d)3, any aggrieved party may appeal this ruling to the Commission by filing a written appeal with supporting documentation no later than the close of business on July 23, 2004. A copy of the ruling must accompany any appeal. A response to any appeal must be filed by the close of business on July 26, 2004. Pursuant to 220 C.M.R. § 106(6)(d)2, rulings and decisions of the hearing officer remain in full force and effect unless and until set aside or modified by the Commission.

II. GROUND RULES

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. §§ 1.00 et seq., the procedural rules of the Department. In addition, the following ground rules shall apply to the conduct of the proceeding in this matter. These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.

A. Information Requests

Information requests are prehearing discovery in the nature of interrogatories and requests for documents (Mass. R. Civ. P. 33, 34). Responses to information requests will not be part of the record unless marked and admitted into evidence.

Parties shall provide responses to information requests within ten calendar days of receipt of the request, unless otherwise indicated by the Hearing Officer. Where the computed response date is a Saturday, Sunday, or legal holiday, the response shall be due on the next following Department business day. This time for responses to information requests shall not apply where the established procedural schedule sets a different time.

For the purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent through detection devices into reasonably usable form.

B. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness at the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

The ordinary time for response will be the fifth business day following the day on which the request is made, unless otherwise indicated by the Hearing Officer. Objections to record requests shall be made at the time the request is made.

C. Protected Material

Where information or material is sought that is considered proprietary or protected by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a

reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. See G.L. c. 25, § 5D; G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth.

A party requesting confidential treatment must submit its request in writing and state the reasons therefor. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect.

Any request for confidential treatment must include, in a sealed envelope, one unredacted copy of the materials for which protection is sought, clearly marked with the words "CONFIDENTIAL" on the outside envelope as well as on each page of the materials. The unredacted copy should be filed directly with the Hearing Officer. A redacted copy of the materials (marked as such) for the public docket should also be filed with the request.

D. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. This requirement includes any requests for confidential treatment, extensions of time deadlines or continuances of hearing dates. Any party may file a written answer/opposition to such motion within five business days of such filing. Papers not served with the motion or answer/opposition may be filed only with leave of the Hearing Officer.

The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance. Prior to filing any motions for discovery orders, counsel for each of the parties shall confer in a good faith effort to narrow the areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice to renewal when accompanied by the required certificate.

All motions arising out of a party's response to or asserted failure to comply with an information or record request, shall be accompanied by a brief. With respect to each information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request, (2) the opponent's response, and (3) a specific legal and factual argument.

For all motions and other interlocutory matters, copies of any cited cases, decisions or other supporting authorities shall be provided to the Hearing Officer in a separate appendix to the motion.

E. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of hand delivery, facsimile transmission ("FAX"), or other speedy means of delivery including by email attachment. Unless otherwise not feasible, the use of mail delivery should be avoided in the exchange of discovery material.

FAX or email delivery may not be used for the original of all materials that must be filed with Mary Cottrell, Secretary of the Department. All materials shall be deemed to be filed or received on the date on which the original filing is received (via mail or hand delivery) by the Department Secretary.

F. Format of Document Filings

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and noting the distribution of copies.

Responses to information and record requests shall contain the following information: (1) set and question number, (2) recitation of request, and (3) identity of person who will support the response.

G. Offering of Exhibits

The proponent of an exhibit must offer the Department three (3) bench copies of the proposed exhibit (standard three-hole punch), premarked with the following information: (1) the docket number of the proceeding, (2) the exhibit number for identification, (3) the date the exhibit is offered for identification. Nonconforming documents will not be accepted.

Where individual exhibits exceeding 75 pages are offered and such material is already in the possession of all parties (e.g., bulk information request responses), the proponent may, no later than 9:00 a.m. on the business day before the material is to be offered, inform all parties and the Hearing Officer of the intended use of such material. Nonetheless, the proponent of any such document must provide the Hearing Officer with a separate premarked, punched copy for the public docket.

Unless otherwise directed by the Hearing Officer, all responses to information requests offered as exhibits should be premarked for identification with the same number as the information request (e.g., if a party wishes to offer the response to information request DTE 2-1 as an exhibit, the response should be premarked for identification as “Exhibit DTE 2-1”).

If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record.

Before the close of hearings, each party that offers exhibits shall submit a listing for those exhibits that presents (1) the exhibit number and (2) a description of the exhibit.

H. Late Filed Exhibits

Exhibits offered after the close of the hearings labor under a heavy burden of untimeliness. Late-filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.

I. Exhibit Format

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify the method of addition on the record upon presentation for marking.

Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

J. Number of Copies

For this proceeding, the Department requires copies to be filed in the following numbers:

Prefiled Testimony - 1 original and 5 copies
Information Requests and Responses - 1 original and 5 copies
Responses to Record Requests - 1 original and 5 copies
Bulk Responses (75 pages or more) - 1 original and 2 copies
Pleadings, Motions, Memoranda - 1 original and 5 copies
Briefs - 1 original and 5 copies

K. Address of Filings

The original of all filings must be filed with Mary Cottrell, Secretary of the Department, One South Station - 2nd Floor, Boston Massachusetts 02110.

Please file one copy with Mary Cottrell, Secretary of the Department and on all parties; also submit two (2) copies of the responses to John J. Geary, Hearing Officer; one (1) copy of the responses to Andreas Thanos, Assistant Director, Gas Division; one (1) copy of the responses to Alexander Kofitse, Analyst, Gas Division; and one (1) copy of the responses to Jack Warchol, Analyst, Gas Division.

For Bulk Responses, one (1) copy should be submitted directly to Andreas Thanos, and one (1) copy should be submitted directly to John Geary.

L. Electronic Filings

All filings (except those for which confidential treatment is sought) must also be submitted to the Department in electronic format using one of the following methods:
(1) by e-mail attachment to dte.efiling@state.ma.us and john.geary@state.ma.us; or
(2) on a 3.5" disk, IBM-compatible format.

The text of the e-mail or the disk label must specify (1) the docket number of the proceeding (D.T.E. 04-47), (2) name of the person or company submitting the filing, and (3) a brief descriptive title of the document. The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing.

Text responses should be written in either Corel Word Perfect (naming the document with a ".wpd" suffix), in Microsoft Word (naming the document with a ".doc" suffix), or as an Adobe PDF file (naming the document with a ".pdf" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel.

All written pleadings or comments submitted in electronic format will be posted on the Department's website, <http://www.mass.gov/dpu>.

M. Hearing Arrangements

If evidentiary hearings are held, they will be conducted at the offices of the Department at One South Station - 2nd Floor, Boston, Massachusetts. These hearings will begin each day at 10:00 a.m., according to the established schedule.

Adjustments to the stated hearing arrangements may be made at the discretion of the Hearing Officer.